

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

THEODORE WILLAMS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 1:16-cv-00266-KS-MTP
	)	
v.	)	Hon. Keith Starrett
	)	District Judge
GARY HARGROVE, <i>et al.</i> ,	)	
	)	Hon. Michael T. Parker
Defendants.	)	Magistrate Judge
	)	
	)	JURY TRIAL DEMANDED

**MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE* NO. 17 TO  
ADMIT SUMMARY EVIDENCE UNDER RULE 1006**

NOW COME Plaintiffs THEODORE WILLIAMS, *et al.*, by their undersigned attorneys, and in support of their motion *in limine* to admit certain summaries under Federal Rule of Evidence 1006. Plaintiffs’ summaries relate to: (1) Coroner Files involving indigent decedents (also referred to as pauper cases in the original files); (2) cases Coroner Files where the Coroner has ordered an autopsy; and (3) two subsets of Coroner Files involving a “release of body” document—the first where the Coroner or his deputies signed the form and the second where a family member or some other person did so. In support, Plaintiffs state:

This Court previously excluded the testimony of Plaintiffs’ expert Dr. Richard Campbell, including his tables relating to some of the same information being presented in the charts that are the subject of this motion. Subsequently, the Court excluded the Plaintiffs’ comprehensive dataset and spreadsheet compiled from the

coding of 5, 281 Coroner Files. Without waiving their objections to those rulings, Plaintiffs have prepared new summaries to conform to the Court's rulings. These charts reflect a review of particular subsets of the total universe of files, and Plaintiffs have disclosed paralegals who can testify as "chart preparers" concerning their review and the charts and summaries generated as a result.

Federal Rule of Evidence 1006 allows admission of summaries when (1) the evidence is voluminous, and (2) review by the jury would be inconvenient. *United States v. Bishop*, 264 F.3d 535, 547 (5th Cir. 2001); FED. R. EVID. 1006.<sup>1</sup>

This is the "only practicable means" of making the contents of voluminous records "available to judge and jury." *Id.* (Advisory Committee Note); *cf. United States v. Duncan*, 919 F.2d 981, 988 (5th Cir. 1990) ("We cannot rationally expect an average jury to compile summaries and to create sophisticated flow charts to reveal patterns that provide important inferences about the defendants' guilt."); *United States v. Winn*, 948 F.2d 145, 158 (5th Cir. 1991) ("The average jury cannot be rationally expected to compile on its own such charts and summaries which would piece together evidence previously admitted and revealing a pattern.").

Here, as previously explained and undisputed, the Coroner Files from 2012 to mid-2016 are voluminous, and could not be meaningfully examined one-by-one in

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<sup>1</sup> In whole, the rule provides:

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

FED. R. EVID. 1006.

open court before the jury. The same is true for the attached charts, which do not include the entire universe of files from 2012 to 2016 but include a sufficiently large subset that summaries are appropriate. *See United States v. Towns*, 718 F.3d 404, 408 n.4 (5th Cir. 2013) (“It is of no consequence that the purchase logs introduced at trial were only portions (primarily those related to Melvin Towns and other conspirators) of a larger bank of business records containing all the pseudoephedrine purchase logs for each store. A proponent may offer summaries from voluminous records.” (citing FED. R. EVID. 1006)).

As stated, Plaintiffs offer summaries in three areas.

#### **I. Summaries Of The Pauper Cases.**

The first chart lists data from 42 Coroner’s files with “pauper” cases and a summary table that tabulates that data. The chart is entirely straightforward. It includes: the Coroner File number, the race of the decedent, the date of the death, whether the case is a pauper case, the funeral home the body was released to, and whether an autopsy was performed. The chart is attached as Exhibit 1 and looks

like this:

WILLIAMS v. HARGROVE -- 42 INDIGENT CASES FROM THE CORONER FILES					
Case Number	Race of Decedent	Date of Death	Was This A Pauper Case?	What Funeral Home Was the Body Released To?	Was An Autopsy Performed?
12-0359-N	White	4/17/2012	Yes	Bradford O'Keefe	No
12-0394-N	White	4/25/2012	Yes	Bradford O'Keefe	No
12-0769-N	Other	8/25/2012	Yes	Bradford O'Keefe	Yes
12-0920-N	Black	10/7/2012	Yes	Marshall	No
13-0006-N	White	11/21/2012	Yes	Riemann	Yes
13-0056-N	White	1/16/2013	Yes	Riemann	No
13-0147-N	White	2/11/2013	Yes	Bradford O'Keefe	No
13-0525-N	White	5/31/2013	Yes	Bradford O'Keefe	No
13-0579-N	White	6/22/2013	Yes	Riemann	No
13-0595-N	White	6/25/2013	Yes	Bradford O'Keefe	No
13-0601-N	White	6/26/2013	Yes	Bradford O'Keefe	No
13-0635-N	White	7/8/2013	Yes	Bradford O'Keefe	No
13-0792-N	White	8/22/2013	Yes	Bradford O'Keefe	No
13-1143-H	White	12/2/2013	Yes	Riemann	Yes
14-0017-N	Black	1/4/2014	Yes	Marshall	No
14-0030-A	White	1/5/2014	Yes	Riemann	Yes
14-0034-N	BLANK	1/7/2014	Yes	Bradford O'Keefe	No
14-0622-N	Black	6/17/2014	Yes	Riemann	No
14-0690-N	White	7/12/2014	Yes	Riemann	No
14-0699-N	White	7/14/2014	Yes	Riemann	No
14-0724-N	White	7/20/2014	Yes	Riemann	No
14-0729-N	White	7/22/2014	Yes	Bradford O'Keefe	No
14-0786-N	White	8/7/2014	Yes	Bradford O'Keefe	No
14-0897-N	White	9/6/2014	Yes	Bradford O'Keefe	No
14-1080-N	White	11/1/2014	Yes	Bradford O'Keefe	No
14-1156-N	White	11/24/2014	Yes	Bradford O'Keefe	No
14-1164-N	White	11/21/2014	Yes	Bradford O'Keefe	Yes
15-0126-N	White	2/1/2015	Yes	Bradford O'Keefe	No
15-0304-N	White	3/21/2015	Yes	Bradford O'Keefe	No
15-0790-N	Black	7/22/2015	Yes	J.T. Hall	No
15-0858-N	White	8/17/2015	Yes	Bradford O'Keefe	No
15-0959-N	White	9/15/2015	Yes	Bradford O'Keefe	No
15-0983-N	White	9/17/2015	Yes	Riemann	No
15-0980-N	White	9/21/2015	Yes	Bradford O'Keefe	No
15-1020-N	White	10/5/2015	Yes	Bradford O'Keefe	No
15-1073-N	Hispanic/Other	10/17/2015	Yes	Bradford O'Keefe	No
15-1109-N	White	10/25/2015	Yes	Riemann	No
15-1212-N	White	11/26/2015	Yes	Bradford O'Keefe	No
16-0155-N	Black	2/12/2016	Yes	Hartwell	No
16-0266-A	White	3/11/2016	Yes	Riemann	No
16-0288-N	White	3/16/2016	Yes	Bradford O'Keefe	No
16-0659-S	White	6/27/2016	Yes	Riemann	No

That chart includes 42 cases, which are also summarized in the following table, attached as Exhibit 2:

Summary of 42 Indigent Cases				
Home Body Released To	Total White Decedents	Total Black Decedents	Total "Other" Decedents	Total Decedents
Riemann	12	1	0	
Bradford O'Keefe	22	0	3	
TOTAL	34	1	3	38
Lockett Williams	0	0	0	
Richmond-August	0	0	0	
Hartwell	0	1	0	
Marshall	0	2	0	
Dickey Brothers	0	0	0	
J.T. Hall	0	1	0	
TOTAL	0	4	0	4
GRAND TOTAL	34	5	3	42

These are identical to the chart and summary provided to the Defendants last Wednesday and to the Court on Thursday except the one decedent listed as an "other" in the prior chart reflects a file where the race is not specified and is

therefore now listed as “unknown,” and two additional files are added which reflect an “other” race that is specified in the file but is neither black nor white.

## II. Summaries Of the Autopsy Cases

Plaintiffs have prepared summaries from cases in which an autopsy was ordered by the Coroner or his staff. The summaries are entirely straightforward: they include the Coroner File number, the race of the decedent, the date of the death, whether an autopsy was authorized, and the funeral home the body was released to. The summary is attached as Exhibit 3, includes 503 cases. A sample looks like this:

CASE	RACE	DATE OF DEATH	BODY RELEASED TO	AUTOPSY AUTHORIZED
12-0001-N	Black	1/1/2012	Riemann	Yes
12-0019-A	White	1/5/2012	Bradford O'Keefe	Yes
12-0032-N	White	1/10/2012	Riemann	Yes
12-0044-N	White	1/14/2012	Riemann	Yes
12-0075-H	White	1/21/2012	Riemann	Yes
12-0085-A	Black	1/22/2012	Lockett Williams	Yes

In addition, as above, the autopsies are summarized in the chart are summarized in a basic table, which looks like this:

Summary of 503 Autopsy Cases

Home Body Released To	Total White Decedents	Total Black Decedents	Total "Other" Decedents	Total Decedents
Riemann	320	88	6	414
Bradford O'Keefe	56	3	8	67
TOTAL	376	91	14	481
Lockett Williams	0	7	0	
Richmond-August	0	1	0	
Hartwell	0	7	0	
Marshall	0	5	0	
Dickey Brothers	0	0	0	
J.T. Hall	0	1	0	
TOTAL	0	21	0	0
Blank	0	1	0	
TOTAL	0	1	0	1
GRAND TOTAL	376	113	14	503

Exhibit 4 (Autopsy Table).

### **III. Release of Body Form Cases**

In many of the Coroner Files, there is a “release of body” form, authorizing the release of a decedent to a particular funeral home. These have been divided into two categories. First are the situations in which the Coroner or one of his deputies have signed the form. Second are the situations in which the release of body document is signed by someone else—a family member or some other person.

#### **A. Release of Body Signed by the Coroner Or His Deputies**

##### **1. Charts with race, funeral home, and autopsy**

This chart is entirely straightforward and includes: the Coroner File number, the race of the decedent, the date of the death, whether the case is a release of body form, whether it was signed by Hargrove or one of his deputies, the funeral home the body was released to, and whether an autopsy was performed. A sample of the chart looks like this, and is independently attached as Exhibit5:

<b>Case Number</b>	<b>Race of Decedent</b>	<b>Date of Death</b>	<b>What Funeral Home was the Body Released to? (ME-1 Form)</b>	<b>Release of Body Document Signed by</b>	<b>What Home was the Body Released to? (Body Release Form)</b>	<b>Was an Autopsy Performed?</b>
12-0001-N	Black	1/1/2012	Riemann	Hargrove	Riemann	Yes
12-0007-N	White	1/3/2012	Riemann	Hargrove	Riemann	No
12-0014-A	White	1/4/2012	Bradford O'Keefe	Hargrove	Bradford O'Keefe	No
12-0075-H	White	1/21/2012	Riemann	Hargrove	Riemann	Yes
12-0082-A	Black	1/23/2012	Hartwell	Hargrove	Hartwell	No
12-0086-S	White	1/25/2012	Riemann	Hargrove	Riemann	No

As above, these cases are summarized in a basic table, which is attached as Exhibit 6. This chart and summary are identical to those sent to defense counsel

last Wednesday reflecting 295 files, except that now 8 files have been added that reflect a decedent of a race other than black or white resulting in a total of 303.

## **2. Additional Information**

Defendants seem to contend that, even where the Coroner has signed a release of body form, that he does not always make the decision with respect to the funeral home designation and that instead the decision is actually still one made by a family member. One defense counsel suggested at the pretrial conference that the charts disclosed last week are “biased” in some way.

In response to these contentions, Plaintiffs have added information to reflect certain family references that were obtained from the files. Attached are a chart and a summary that include all of the release of body information in the prior two tables but with additional information relating to pre-need forms and other specific information involving family preferences. *See Exhibit 7 (Release of Body with Family Choice; Exhibit 8 (Table of Release of Body With Family Choice).*

### **B. Release of Body NOT signed by the Coroner Or His Deputies**

The final summary is a list of cases in which there is a release of body document signed by someone other than the Coroner or one of his deputies. This includes over 1,200 cases, summarized in a simple list that includes the case number, the bates number for the body release document and whether it was a “family member” or “other” that signed the release of body document. A sample of the chart looks like this:

<b>CASE</b>	<b>BATES # for RELEASE OF BODY DOCUMENT</b>	<b>PERSON AUTHORIZING RELEASE</b>
12-0003-A	HCCO-008214	Family Member
12-0012-N	HCCO-008380	Family Member
12-0024-N	HCCO-008546	Family Member
12-0025-N	HCCO-008574	Family Member
12-0030-N	HCCO-008637	Family Member
12-0081-N	HCCO-009204	Family Member
12-0105-N	HCCO-009496	Other
12-0107-N	HCCO-009519	Family Member
12-0111-N	HCCO-009603	Other

Exhibit 9 (List of Release Forms Not Signed by the Coroner). As above, this list satisfies Rule 1006—it summarizes voluminous information, does so in an objective way, and Plaintiffs are willing to provide a sponsoring witness (previously-disclosed paralegal staff) to lay the foundation, if required, for this chart.

#### **IV. The Summaries Are Admissible**

The foregoing summaries satisfy Rule 1006. They summarize voluminous records available for all parties and will be available at trial. They are also completely objective, accurate, and reliable.

These summaries were also prepared by paralegal staff disclosed on the proposed pretrial order, who checked the Coroner files one-by-one, and who can testify as sponsoring witnesses, and be cross-examined if required. (As previously indicated, Plaintiffs will also allow a limited deposition of the sponsoring witness, if desired). That should end the matter.

However, Defendants seem inclined—regardless of the chart—to challenge



the summaries as incomplete or somehow biased because they do not include all of the information Defendants would prefer Plaintiffs would have included. But, these challenges fail. Plaintiffs were not required to present objective summaries at the beck and call of Defendants or their wishes. Indeed, the charts above are straightforward and include information that, undoubtedly, defendants will try to argue support their contentions (*see, e.g.*, Exhibit Number 9).

Nonetheless, and regardless, it is well established that “a summary may include only evidence favoring one party, so long as the witness does not represent to the jury that he is summarizing all the evidence in the case.” *United States v. Bishop*, 264 F.3d 535, 547 (5th Cir. 2001) (citing *Flemister v. United States*, 260 F.2d 513, 517 (5th Cir.1958)); *see also United States v. Armstrong*, 619 F.3d 380, 384 (5th Cir. 2010) (“The presence of an inference itself is not prejudicial, for under rule 1006, “[t]he essential requirement is not that the charts be free from reliance on any assumptions, but rather that these assumptions be supported by evidence in the record.” (quoting *United States v. Buck*, 324 F.3d 786, 791 (5th Cir. 2003)); *Bishop*, 264 F.3d at 547 (no error for government witness to summarize “only the evidence favorable to the government”). Plaintiffs will not contend that the limited summaries constitute all of the evidence in the case.

Accordingly, Defendants’ arguments raised in prior briefing or raised at the pre-trial conference that the objective charts are somehow faulty because they do not display information in the manner they would prefer falls flat. Plaintiffs recognize their burden to be accurate in preparing the summaries, but Plaintiffs are

not required to summarize the evidence in the manner dictated by Defendants (who have not sought to provide any mechanism for summarizing the Coroner Files even though they seek to admit all of them nonetheless).

### CONCLUSION

Plaintiffs respectfully request that the foregoing motion be granted, and that the foregoing spreadsheets summarizing certain Coroner Files be deemed admissible evidence for trial.

DATE: March 21, 2018

RESPECTFULLY SUBMITTED,

**THEODORE WILLIAMS, *et al.***

By: /s/ David B. Owens  
*One of Plaintiff's Attorneys*

*Attorneys for Plaintiffs*

Michael Kanovitz\*  
Steven Art\*  
David B. Owens\*  
Katherine A. Roche\*  
LOEVY & LOEVY  
311 N. Aberdeen St., 3<sup>rd</sup> fl.  
Chicago, IL 60647  
(312) 243-5900  
(312) 243-5902 (fax)  
steve@loevy.com

\* Admitted *pro hac vice*

Robert McDuff  
767 N. Congress St.  
Jackson, MS 39202  
(601) 969-0802  
rbm@mcdufflaw.com

Beth L. Orlansky  
Kiara A. Taite  
Mississippi Center for  
Justice  
963 Division St.  
Biloxi, MS 39530  
(228) 435-7248  
borlansky@mscenter  
forjustice.org

### **CERTIFICATE OF SERVICE**

I, David B. Owens, an attorney, hereby certify that on March 21, 2018, I filed the foregoing **MOTION IN LIMINE NO. 17** using the Court's CM/ECF system, which effected service on all counsel of record.

By: /s/ David B. Owens  
*One of Plaintiffs' Attorneys*